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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/549,946	09/20/2005	Robin A. Felder	21764L-001200US	7118

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EXAMINER

NATNITHITHADHA, NAVIN

ART UNIT	PAPER NUMBER
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3735

MAIL DATE	DELIVERY MODE
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06/03/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/549,946	Applicant(s) FELDER ET AL.	
	Examiner NAVIN NATNITHITHADHA	Art Unit 3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12122007</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The status of the claims is as follows:

Claims 1, 2, 4, 5, 8, 10, 12-18, 22, 23, 26, and 29-32 are currently amended;

Claims 3, 6, 7, 9, 11, 19-21, 23, 25, 27, and 28 are as originally filed;

Claims 33 and 34 are added; and

Claims 1-34 are cancelled.
2. The objections to claim 1, 2, 4-6, 8, 10, 12-18, 23, 26, and 29-31 are

WITHDRAWN in view of the Amendment, filed 12 December 2007.
3. The 35 U.S.C. 112, second paragraph, rejections to claim 16 is WITHDRAWN in

view of the Amendment, filed 12 December 2007.

Response to Arguments

4. Applicant's arguments, see Remarks, pp. 7-8, filed 12 December 2007, with

respect to the rejection of claims 1-32 under 35 U.S.C. 102(e) as being anticipated by

Goodman et al, U.S. Patent No. 6,616,613 B1 ("Goodman"), have been fully

considered, but they are not persuasive.

Applicant contends, see Remarks, pp. 7-8, that "none of the embodiments of the Goodman system disclose obtaining the information when an interface module is in indirect communication with the subject's body". However, this argument is not persuasive.

Firstly, Goodman does, in fact, teach an interface member ("input device") 20 that is configured to function when in indirect communication with the subject's body (see fig. 2. In other words, interface member 20 obtains blood pressure information outside the body rather than directly communicating with the subject's body by obtaining blood pressure from the artery that is inside the body (where the interface member would be subcutaneous to be considered directly communicating).

Secondly, in response to Applicant's argument that Goodman does not teach "an interface member that is configured to function when in indirect communication with the subject's body", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Here, Applicant's claimed "interface member" is not structurally different than Goodman's "input device" 20.

Thirdly, because it is not clear what the function of the interface member is when it is in indirect communication with the subject's body, see 35 U.S.C. 112, second paragraph rejection below, Goodman can also be interpreted as performing any function, e.g. appearing as a computer mouse-like structure, while positioned away from the subject's body.

For the above reasons, Applicant's amended independent claims 1, 22, and 32 do not distinguish over Goodman. Thus, the rejections of claims 1-32 are maintained.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claims 1, 22, and 32, it is not clear what is the function of the interface member while it is in indirect communication with the body.

Claims 2-21, 23-31, 33, and 34 are rejected because of their dependencies.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1-34 are rejected under 35 U.S.C. 102(e) as being anticipated by Goodman.

Claims 1-21: Goodman teaches a blood pressure and pulse rate system for deriving the blood pressure and pulse of a subject, said system (see Abstract) comprising: an interface member, e.g. handle ("input device") 20; a sensor module ("PPG sensor") 12 in communication with the interface member 20 and coupled to the subject, said sensor module 12 is a pressure determining device for detecting a pulse wave form and pulse rate ("PPG signal" or "pulse contour", see col. 11, l. 66, to col. 12, l. 34, and col. 15, l. 26, to col. 16, l. 42) ; a processor module ("processing device") 14 that analyzes the

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pulse wave form and pulse rate signal for deriving variants of blood pressure, such as systolic or diastolic pressure (see col. 5, ll. 16-37, and col. 29, l. 33, to col. 30, l. 16); an output module, such as a display 5, a printer 11, a communication network 18, or web server 16 (see fig. 15B); wherein the sensor module and processor module are in wireless communication (see col. 13, ll. 50-57) or hard wired communication 13 (see fig. 2); an archival storage module ("web server") 16;

Claims 22-34: Because the method and computer program product of claims 22-34 are not distinct from the subject matter of claims 1-4, 11-13, 15, 16, and 21, Goodman teaches claims 22-34 for the same reasons as claims 1-4, 11-13, 15, 16, and 21 discussed above.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NAVIN NATNITHITHADHA whose telephone number is (571)272-4732. The examiner can normally be reached on Monday-Friday, 9:00 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/N. N./
Patent Examiner, Art Unit 3735
05/29/2008

/Charles A. Marmor, II/
Supervisory Patent Examiner
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